

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING
adoption of new rules I	)	ON PROPOSED ADOPTION,
through XLI, the amendment	)	AMENDMENT AND REPEAL
of 37.37.316 and 37.37.318	)	
and the repeal of ARM	)	
37.97.1001, 37.97.1002,	)	
37.97.1006, 37.97.1011,	)	
37.97.1013, 37.97.1014,	)	
37.97.1016, 37.97.1018, and	)	
37.97.1019 pertaining to	)	
youth foster homes		

TO: All Interested Persons

1. On January 5, 2006, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption, amendment and repeal of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on December 27, 2005, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@mt.gov.

2. The rules as proposed to be adopted provide as follows:

RULE I YOUTH FOSTER HOMES: PURPOSE (1) These rules establish licensing procedures and licensing requirements for youth foster homes, including therapeutic foster homes and kinship foster homes licensed by the department.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-102, 52-2-111, 52-2-112, 52-2-113, 52-2-115, 52-2-601, 52-2-603, 52-2-621 and 52-2-622, MCA

RULE II YOUTH FOSTER HOMES: DEFINITIONS The following definitions apply to youth foster home licensing rules:

(1) "Department" means department of public health and human services.

(2) "Foster child" means a person under 18 years of age who has been placed in a youth foster home by the department, another state agency, a tribe, or a licensed child placing agency. A youth over the age of 18 may remain in foster care if

still in secondary school.

(3) "Foster parent" means a person responsible for the day-to-day care, supervision, and guidance of children in a youth foster home.

(4) "Kinship foster home" means a youth foster home in which substitute care is provided by a member of the child's extended family, a member of the child's or family's tribe, the child's godparents, the child's stepparents if the child is placed with the stepparent by the department, or a person to whom the child, child's parents and family ascribe a family relationship and with whom the child has had a significant emotional tie that existed prior to the agency's involvement with the child or family.

(5) "Secondhand smoke" or "environmental tobacco smoke (ETS)" is a mixture of the smoke given off by the burning end of a cigarette, pipe, or cigar, and the smoke exhaled by smokers.

(6) A "serious incident" includes, but is not limited to suicide attempts, use of physical force by a foster parent or any member of the foster parent's household, sexual contact with the child by anyone, emergency medical treatment, injury to a foster child which requires hospitalization, physical assault by the foster child, involvement with law enforcement by any member of the foster parent's household, including a foster child, or the death of a foster child.

(7) "Substitute care" or "foster care" means the full-time care of a child who is placed in a youth foster home by the department, another state agency, tribe, or licensed child placing agency for the purpose of providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment, to children who are removed from or who are without the care and supervision of their parents or guardians.

(8) "Therapeutic foster home" means a youth foster home operating under the direction of the clinical staff of a licensed child placing agency when such agency has a contract with the department to provide therapeutic foster care services. A therapeutic foster home provides substitute care to only one child unless it is approved by the department to provide care for a second child needing therapeutic services. The therapeutic foster home may provide services to a foster child who does not need therapeutic services only as provided in [RULE XXXII].

(9) "Youth foster home" or "foster home" means a youth care facility in which substitute care is provided to one to a maximum of six children or youth other than the foster parents' own children, stepchildren or wards.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-102, 52-2-111, 52-2-112, 52-2-113, 52-2-115, 52-2-601, 52-2-603, 52-2-621 and 52-2-622, MCA

RULE III YOUTH FOSTER HOMES: LICENSE REQUIRED (1) Every youth foster home shall be licensed by the department or responsible tribal authority.

(2) Failure of a provider to obtain or renew a license while continuing to operate a youth foster home is a misdemeanor

and shall be subject to the penalties provided in 52-2-623, MCA.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

#### RULE IV YOUTH FOSTER HOMES: LICENSING PROCEDURES

(1) Application for a license must be made on an application form provided by the department.

(2) Upon receipt of a completed application packet for license or renewal of license and completion of a licensing assessment, the department shall determine if the applicant meets all requirements for licensure as established in these rules.

(3) If the department determines that an application or accompanying information is incomplete or erroneous, the department shall notify the applicant in writing of the specific deficiencies or errors, and the applicant shall submit the required or corrected information within 60 days. The department shall not issue a regular license or renew a license until it receives all required or corrected information.

(4) The applicant or licensee shall cooperate with the department in providing the information required by these rules.

(5) Failure to provide information the applicant or licensee is obligated to provide may result in the denial of the application, or if a license has been issued, may result in other negative licensing action.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

#### RULE V YOUTH FOSTER HOMES: LICENSURE AND RENEWAL

(1) The department shall issue a youth foster home, kinship foster home, or therapeutic foster home license to any license applicant that the department determines meets all licensing requirements established by these rules. The license will expire one year from the date it is issued unless it is extended up to an additional 60 days pursuant to (3).

(2) For placement made on or after [effective date of rule], the number of children for whom a kinship foster home is licensed will be based in part on the number of children already residing in the home. There shall be a maximum of seven children residing in a kinship foster home at any one time unless an exception is made by the regional administrator to accommodate placement of a sibling group.

(3) The department shall renew the license annually on the expiration date of the previous year's license if:

(a) the foster parents apply for renewal of the foster home license on a form provided by the department at least 30 days prior to the expiration date of the current license; and

(b) following completion of a relicensing study, the department determines that the foster home continues to meet all licensing requirements established by these rules.

(4) If the foster parent submits a completed application packet for renewal of a license at least 30 days prior to the expiration of the license, but the department is unable to complete the relicensing study but makes a determination that the home is in compliance with the licensing requirements before the expiration date of the previous year's license, the previous year's license will continue in effect for no more than 60 days while the department completes the relicensing study.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE VI YOUTH FOSTER HOMES: PROVISIONAL LICENSURE

(1) The department may, at its discretion, issue a provisional license restricted for care of a specific child or children for any period up to four months to any license applicant for a youth foster home or kinship foster home which has:

- (a) met all licensing requirements for fire safety;
- (b) completed and signed a release of information form provided by the department;
- (c) submitted completed fingerprint cards on all adult household members;
- (d) a satisfactory child protective and adult protective services check for all adults present in the home; and
- (e) agreed in writing to comply fully with all licensing requirements established by these rules prior to the expiration of the provisional license.

(2) The department may, at its discretion, renew a provisional license for no more than a two month period of time if the license applicant shows good cause for unintentional failure to comply fully with all licensing requirements within the time period covered by the prior provisional license.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE VII YOUTH FOSTER HOMES: RESTRICTED LICENSE (1) The department may issue a license that is restricted to the care of a specific child or children.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE VIII YOUTH FOSTER HOMES: DUAL LICENSE (1) If an applicant for a foster home or kinship foster home is a registered day care provider, or if a licensee wishes to become a registered day care provider, the regional administrator and the department's quality assurance division (QAD) must approve the dual license or registration.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, 52-2-721, 52-2-722 and 52-2-723, MCA

RULE IX YOUTH FOSTER HOMES: GRANTING LICENSURE EXCEPTIONS

(1) An applicant against whom child abuse or neglect has been substantiated or who has been convicted of abuse, sexual abuse, neglect, or exploitation of an elderly person or person with a developmental disability shall be denied a foster care license unless an exception is granted by a department regional administrator in his discretion, after careful review of extenuating circumstances which justify the issuance of a restricted license.

(2) An applicant whose child has been in foster care shall be denied a foster care license, unless an exception is granted by a department regional administrator because the circumstances leading to the provision of services and placement no longer exist. This does not include an applicant whose children were in foster care prior to being placed with the applicant for adoption.

(3) No applicant shall be newly licensed as a youth foster home if any one of the following has occurred within 12 months of the application, unless an exception is granted by a department regional administrator:

(a) a death of a spouse or a child in the applicant's family;

(b) a marital separation or divorce of the applicants;

(c) an adoption of a child who has not been living with the applicants for at least one year;

(d) the birth of a child to the applicants; or

(e) loss of employment by an applicant.

(4) If any event described in (3) through (3)(e) occurs in a licensed foster home, the foster parents shall notify the licensing worker within 48 hours as required by [RULE XIV] and the licensing worker will reevaluate the home within 30 days to determine whether to recommend a change in the licensing status of the home.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE X YOUTH FOSTER HOMES: NEGATIVE LICENSING ACTION

(1) The department, through written notice to the applicant or licensee, shall deny, revoke, or restrict a license upon finding that:

(a) the applicant, licensee, or member of the applicant's or licensee's household, or anyone living on the foster home property has a conviction for a serious crime, such as but not limited to homicide, sexual intercourse without consent, sexual assault, aggravated assault, assault on a minor, assault on an officer, assault with a weapon, kidnapping, aggravated kidnapping, prostitution, robbery, or burglary;

(b) the applicant, licensee, or member of the applicant's

or licensee's household, or anyone living on the foster home property has a conviction for a crime pertaining to children or families, including but not limited to child abuse or neglect, incest, child sexual abuse, ritual abuse of a minor, felony partner or family member assault, child pornography, child prostitution, internet crimes involving children, felony endangering the welfare of a child, felony unlawful transactions with children, or aggravated interference with parent-child contact; or

(c) the applicant, licensee, or member of the applicant's or licensee's household, or anyone living on the foster home property has within the previous five years had a felony conviction for a drug related offense, including but not limited to use, distribution, or possession of controlled substances, criminal possession of precursors to dangerous drugs, criminal manufacture of dangerous drugs, criminal possession of imitation dangerous drugs with the purpose to distribute, criminal possession, manufacture or delivery of drug paraphernalia, or driving under the influence of alcohol or other drugs; or

(d) the applicant, licensee, or member of the applicant's or licensee's household, or anyone living on the foster home property has been convicted of abuse, sexual abuse, neglect, or exploitation of an elderly person or a person with a developmental disability.

(2) The department, through written notice to the applicant or licensee, may deny, suspend, restrict, or revoke a license upon a finding that:

(a) the applicant, licensee, or member of the licensee's household or anyone residing on the foster home property has a conviction for misdemeanor partner/family member assault, misdemeanor endangering the welfare of a child, misdemeanor unlawful transaction with children, or a crime involving an abuse of the public trust;

(b) the foster home is not in compliance with fire safety standards;

(c) the foster home or foster parents are not in compliance with any other licensing requirements;

(d) the foster parent has made any material misrepresentations to the department, either negligent or intentional, including an omission of information the foster parent is obligated to disclose to the department, regarding any aspect of the foster home;

(e) the foster parent has failed to use the foster care payments for the support of the foster child;

(f) the foster parent has been named as the perpetrator in a substantiated report of abuse or neglect;

(g) the foster parent failed to report an incident of suspected abuse or neglect of any child to the department as required by 41-3-201, MCA, within 24 hours of receiving information pertaining to the incident;

(h) the results of a psychological or medical examination provide reasonable grounds for the department to believe that the foster parent is not an appropriate caretaker for a child; or

(i) the foster parents or anyone living in the foster home or on foster home property may pose any risk or threat to the

safety or welfare of a child placed in the foster home.

(3) The foster home has failed to protect the health, welfare, or safety of a child or the foster home presents a threat to the health, welfare, or safety of a child.

(4) A foster care license may be suspended, restricted, or revoked at the discretion of a department regional administrator if the licensee's child is placed in foster care.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 2-4-631, 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE XI YOUTH FOSTER HOMES: REMOVAL OF A CHILD (1) The department may immediately remove a child from a foster home at any time it determines that another placement is more appropriate or that there is a need to protect the child from possible harm.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE XII YOUTH FOSTER HOMES: HEARING PROCEDURES (1) Any applicant or licensee against whom the department takes negative licensing action regarding a youth foster home, kinship foster home, or therapeutic foster home license may request a hearing as provided in ARM 37.5.304, 37.5.307, 37.5.313, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334, and 37.5.337.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 2-4-102, 2-4-623, 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE XIII YOUTH FOSTER HOMES: CONFIDENTIALITY OF RECORDS AND INFORMATION (1) All information in records maintained in a youth foster home and all personal information made available to a foster parent pertaining to an individual child and the child's family must be kept confidential unless a written court order authorizes the release of the information. The confidentiality requirement continues after the child is no longer in the home. The confidentiality requirement also applies to information a foster parent receives about foster children placed with other foster parents, whether the information is received in a support group setting or otherwise.

(2) All requests for records or information maintained by a youth foster home which pertain to an individual child or the child's family must be referred to the department or, if applicable, to the agency that placed the child. The department may authorize the release of information from the foster home; the foster home may not.

(3) All records pertaining to individual children placed by the department are available at any time to the department or its representatives.

(4) Records pertaining to individual children residing in the home but not placed by or in the custody of the department are available to the department for the purposes of licensing or relicensing the youth foster home.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 41-3-205, 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE XIV YOUTH FOSTER HOMES: REPORTS OF CHANGE IN COMPOSITION OF FOSTER HOME (1) Foster parents shall notify the department licensing worker or supervisor, and if applicable, the child placing agency's licensing worker under whose jurisdiction the foster home operates, within 48 hours of:

- (a) a death of a spouse or a child in the foster family;
- (b) a marital separation or divorce of the foster parents;
- (c) an adoption of a child who has not been living with the foster parents for at least one year;
- (d) the birth of a child to the applicants; or
- (e) loss of employment by an applicant.

(2) At least 30 days prior to moving, foster parents shall report a planned change of residence to the department licensing worker or supervisor and, if applicable, to the child placing agency under whose jurisdiction the foster home operates. The licensing worker assigned to the family will evaluate the new residence for compliance as soon as possible but not more than 10 calendar days after the move to the new residence.

(3) Foster parents shall provide notice to the department licensing worker or supervisor and, if applicable, the child placing agency under whose jurisdiction the foster home operates:

(a) before agreeing to accept formal or informal placement of any child, including placement of an exchange student, when such placements have been arranged without prior approval of the agency which conducted the foster home licensing study;

(b) within one working day of any changes in household composition; and

(c) within 30 days of a change in employment.

(4) If a foster parent is unwilling or unable to care for a child who is placed in the foster parent's care, the foster home shall notify the child's worker immediately. The foster parent is not authorized to make his own arrangements for care of the child, except for respite care.

(5) A foster parent may not accept a child into the household without prior notice to the department and the prior approval of the department.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE XV YOUTH FOSTER HOMES: REPORTS OF SUSPECTED CHILD ABUSE OR NEGLECT (1) As required by 41-3-201, MCA, foster parents shall report any incident of known or suspected child



abuse or neglect of any child to the department's centralized intake bureau at 1(866)820-5437. Foster parents shall make the report within 24 hours of receiving information concerning suspected child abuse or neglect.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 41-3-201, 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE XVI YOUTH FOSTER HOMES: REPORTS OF SERIOUS INCIDENTS AND THREATS (1) Foster parents shall immediately report any serious incident involving a foster child to the person or agency which placed the child and to the department licensing worker.

(2) Foster parents shall complete a written incident report on a form provided by the department of any serious incident involving any child in the home. The report shall include the date and time of the incident, the child involved, the nature of the incident, description of the incident and the circumstances surrounding the incident. A copy of the report shall be maintained at the foster home and a copy sent to the department licensing worker the next working day.

(3) Foster parents shall immediately report any foster child who has run away from home to the police and shall report the runaway to the agency which placed the child within the next working day.

(4) Foster parents shall report disasters or emergencies which require evacuation of a foster home to the department's centralized intake bureau at 1(866)820-5437.

(5) Foster parents shall report any threats to the health, welfare, or safety of a child at the time of the license application or within the next working day after becoming aware of the threat.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 2-4-631, 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE XVII YOUTH FOSTER HOMES: REPORTS OF DISCIPLINE VIOLATIONS (1) If a foster parent or other household member physically disciplines a foster child as described in [RULE XXXIV] or violates any other portion of that rule, the foster parent must notify the agency that placed the child and the department licensing worker or supervisor of the violation by the next working day. The foster parent must then complete a written report on a form provided by the department and must submit it to both the person or agency which placed the child and to the department licensing worker or supervisor within 48 hours of giving notice of the violation.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE XVIII YOUTH FOSTER HOMES: GENERAL REQUIREMENTS FOR FOSTER PARENTS AND OTHER HOUSEHOLD MEMBERS (1) Foster parents must:

- (a) be at least 18 years of age;
- (b) be physically, mentally and emotionally competent to care for children;
- (c) like and understand children;
- (d) be in good general health;
- (e) be of good moral character;
- (f) be able to demonstrate the foster home has sufficient resources to meet the needs of their existing family, independent of foster care reimbursements;
- (g) comply with state laws including those that relate to the possession or use of drugs, alcohol, tobacco, and firearms; and
- (h) have lived together for at least 24 months unless an exception is granted by a department regional administrator.

(2) No person residing in or visiting the foster home may pose a risk or threat to the safety and well being of children in the home.

(3) The foster home shall protect the foster child from exposure to sexual or violent language and behavior inappropriate to the child's age, including but not limited to physical activity, visual or other media depictions, and music, including lyrics.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE XIX YOUTH FOSTER HOMES: HEALTH VERIFICATION REQUIREMENTS FOR FOSTER PARENTS AND OTHER HOUSEHOLD MEMBERS

(1) A personal statement of health form provided by the department must be completed for each person in the applicant's household. The form must be submitted to the department with the initial licensure application and a new form must be submitted prior to relicensure.

(2) Any person staying in the foster home for more than two weeks must complete a personal statement of health form provided by the department. If the person is an adult, the person must also complete a release of information form provided by the department. The completed forms are to be submitted to the department licensing worker.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE XX YOUTH FOSTER HOMES: PRESCHOOL AGE CHILD IMMUNIZATION REQUIREMENTS (1) All children residing in the

foster home under five years of age shall be immunized according to the following schedule:

Total Immunizations Required, By Age

<u>Age</u>	<u>Number Doses - Vaccine Type</u>
under 2 months old	no vaccinations required
by 3 months of age	1 dose of polio vaccine 1 dose of DTP vaccine 1 dose of Hib vaccine
by 5 months of age	2 doses of polio vaccine 2 doses of DTP vaccine 2 doses of Hib vaccine
by 7 months of age	2 doses of polio vaccine 3 doses of DTP vaccine *2 or 3 doses of Hib vaccine
by 16 months of age	2 doses of polio vaccine 3 doses of DTP vaccine 1 dose of MMR vaccine, administered no earlier than 12 months of age *1 dose of Hib vaccine given after 12 or 15 months of age
by 19 months of age	1 dose of varicella vaccine 3 doses of polio vaccine 4 doses of DTP vaccine 1 dose MMR vaccine, administered no earlier than 12 months of age *1 dose of Hib vaccine given after 12 or 15 months of age

(\*) varies depending on vaccine type used.

(2) If the child is at least 12 months old but less than 60 months of age and has not received any Hib vaccine, the child must receive a dose.

(3) Documentation of each required vaccination must include the date of birth and the month, day, and year of each vaccination.

(4) Hib vaccine is not required or recommended for children five years of age and older.

(5) Doses of MMR vaccine, to be acceptable under this rule, must be given no earlier than 12 months of age. A child who received a dose prior to 12 months of age must be revaccinated.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622 and 52-2-735, MCA

RULE XXI YOUTH FOSTER HOMES: SCHOOL AGED CHILD IMMUNIZATION REQUIREMENTS (1) All children residing in the foster home under 12 years of age shall be immunized in accordance with the following standards:

<u>Vaccine</u>	<u>Dosages Required by Age</u>
Polio	Each child must receive at least three doses of polio vaccine, one of which is administered after age four.
DTP or DTaP	<p>Each child must receive at least four doses of DTP or DTaP (diphtheria, tetanus, and pertussis) vaccines by age four and one dose of Dtap after age four but before age seven, unless a licensed health care provider has issued a medical exemption for the pertussis portion of the DTP or DTaP vaccine. If a medical exemption has been issued for pertussis, the child must receive at least four doses of DT vaccine or a combination of four doses of DT, DTP, and DTaP vaccines before age four and one dose of the DT vaccine after age four but before age seven.</p> <p>Because neither DTP nor DTaP vaccines are recommended or required for a child older than age seven, a child in the foster home age seven or older who has not received the four doses of DTaP or DTP vaccinations described above must receive a Td vaccine (tetanus and diphtheria vaccine intended for persons seven years of age or older) as soon as possible and must then receive sufficient additional Td doses to reach a minimum of three doses of any combination of DTP, DTaP, DT, or Td containing vaccine.</p>
Hib	Each child must receive one dose of Hib vaccine (Haemophiles influenza type B) disease on or after the child's first birthday. However, an Hib vaccination is not recommended or required for a child age five or older who has not previously received one.
Td	Each child in the foster home must receive a Td (tetanus diphtheria containing vaccine intended for children younger than seven years of age) booster shot unless the child has had a DTP, DTaP, DT, or Td shot within the previous five years or the child received a Td shot at seven years of age or older.

(2) The immunization history may be recorded on the Montana certificate of immunization form provided by the department or a physician or clinic may provide immunization record which includes:

- (a) the name of the physician or clinic;
- (b) the name and birth date of the child; and

(c) the date and type of immunization.

(3) The immunization information is to be kept on file in both the foster home and the licensing file.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 20-5-403, 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE XXII YOUTH FOSTER HOMES: CRIMINAL BACKGROUND CHECKS

(1) A satisfactory criminal background, motor vehicle, and child and adult protective services check is required for each person living in the household or on the foster home property.

(2) A new applicant must submit a completed fingerprint card so that a fingerprint based criminal records check can be requested.

(3) If a new applicant who has lived only in Montana cannot be successfully fingerprinted or if two fingerprint cards cannot be successfully read by the department of justice, a Montana name based criminal records check will be used for applicants who have not lived in a state other than Montana.

(4) If an applicant who has lived in states other than Montana cannot be successfully fingerprinted, or if two fingerprint cards cannot be successfully read by the department of justice, a Montana name based criminal records check will be completed, and:

(a) a criminal history check will be requested from every state in which an applicant has lived in the past 15 years;

(b) a check will be made of the violent offender and criminal history registries in those states if this information is available for states in which the applicant has lived; and

(c) if after 45 days, the department has been unable to obtain results of a criminal records check for an applicant who has lived in Montana for at least five years, the applicant must sign an affidavit attesting to his lack of criminal history or to the details of existing criminal history. The affidavit will be accepted in lieu of results from a criminal history check.

(5) An annual name based criminal records check and a motor vehicle check for licensed foster parents are required for relicensure.

(6) Persons formerly licensed as foster parents will be treated as new applicants if the former foster parents have not been licensed for a period of more than one year or if the foster parents have lived out of state for any period of time since being licensed in Montana.

(7) If an applicant has children, a child protective services check will be requested from all states in which an applicant has lived since the birth date of the applicant's oldest child.

(8) If an applicant does not have children, a child protective services check will be requested from all states in which the applicant has lived in the previous 15 years.

(9) If after 45 days the department has been unable to obtain results from a child protective services check, the applicant must sign an affidavit attesting to his lack of child protective services history or to the details of existing child

protective services history. The affidavit will be accepted in lieu of receipt of child protective services history results.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE XXIII YOUTH FOSTER HOMES: PSYCHOLOGICAL AND MEDICAL EXAMINATIONS (1) The department may require a psychological evaluation or medical examination, and/or a signed authorization for release of medical or psychological records from:

(a) any person applying for licensure as a foster parent, or any member of the household of a person applying for licensure as a foster parent; or

(b) any foster parent or any member of a foster parent's household.

(2) The results of a psychological or medical examination may be considered in determining whether an applicant or licensee meets licensing requirements and may be relied upon as a basis for negative licensing action.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE XXIV YOUTH FOSTER HOMES: GENERAL PROGRAM REQUIREMENTS (1) The foster parents shall not accept more children than the number specified on the license.

(2) The foster parents must arrange for appropriate child care for every child in foster care when the child is not being cared for by a foster parent.

(3) The foster parent shall provide appropriate care including:

(a) regular, well balanced meals, an adequately maintained and furnished home, clothing, and supervision of child's health and dental care;

(b) personal care, supervision, and attention appropriate to each child's age, needs, and level of functioning;

(c) opportunities for educational, social, and cultural growth, through suitable reading materials, toys, and equipment; and

(d) associations with peer groups and opportunities for experiences in school and community.

(4) The foster parents shall teach each foster child personal care, hygiene, and grooming, and shall provide each child with the necessary supplies.

(5) Money earned by a child or received as a gift or allowance is the child's personal property and must be accounted for separately from foster home funds.

(6) The foster parents, in conjunction with the supervising worker, shall distinguish between tasks which children are expected to perform as part of living together, jobs to earn spending money, and jobs performed for vocational training.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-102, 52-2-111, 52-2-113, 52-2-115, 52-2-601, 52-2-603, 52-2-621 and 52-2-666, MCA

RULE XXV YOUTH FOSTER HOMES: COOPERATION OF FOSTER PARENTS (1) The foster parents shall cooperate with the placing agency and participate in case conferences and in-service training. Foster parents shall implement decisions made by the department regarding the child and shall support the department's permanent plan for the child.

(2) The foster parents shall permit and encourage contact and visitation between the foster child and the child's birth or legal family, including parents and siblings, except in those cases where a restriction of visitation is part of a court order or the written case plan.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-102, 52-2-111, 52-2-113, 52-2-115, 52-2-601, 52-2-603, 52-2-621 and 52-2-666, MCA

RULE XXVI YOUTH FOSTER HOMES: CHILD EDUCATION AND TRAINING (1) The foster parents shall cooperate with the placing agency and, when appropriate, the birth or legal parents, in providing or arranging an age appropriate education, employment, or training program appropriate for each child that addresses the child's needs in the areas of social living, sex education, consumer education, career planning, and preparation for independent living.

(2) The foster parents shall assure that all children attend a public school unless otherwise approved by the department.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-102, 52-2-111, 52-2-113, 52-2-115, 52-2-601, 52-2-603, 52-2-621 and 52-2-666, MCA

RULE XXVII YOUTH FOSTER HOMES: CHILD RELIGIOUS AND CULTURAL EXPRESSION (1) Each child in foster care shall have the opportunity to voluntarily practice his religion. Foster parents shall allow each child to attend available religious services of the child's or birth parent's choice in the community and to visit with representatives of the child's faith.

(2) Foster parents shall respect the religious beliefs or practices of the children placed in their home.

(3) Each child shall be given the opportunity to identify with his own cultural heritage and shall be encouraged to do so.

(4) Participation or nonparticipation by the child in religious activities of the child or foster family shall not be used as a form of discipline.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-102, 52-2-111, 52-2-113, 52-2-115, 52-2-601, 52-2-603, 52-2-621 and 52-2-666, MCA

RULE XXVIII YOUTH FOSTER HOMES: CHILD CLOTHING (1) The foster parents shall ensure that each child is supplied with his own clothing suitable to the child's age and size.

(2) Clothing shall be comparable to the clothing of other children in the community.

(3) Children shall be given appropriate choice in the selection of their clothing.

(4) The foster parent shall inventory the child's clothing and other possessions when the child is placed in the foster home and again at the time of discharge from the foster home.

(a) All clothing or other items specifically purchased for or given to the child shall be added to the inventory list;

(b) All of the child's clothing and other possessions shall be sent with the child to any subsequent placement, including a return to the child's home;

(c) Foster parents shall maintain receipts for clothing purchased with funds provided by the department; and

(d) Foster parents shall provide the clothing receipts and the inventory list at any time upon request of the department and shall provide the receipts and inventory to the child's social worker when the child leaves the foster home.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE XXIX YOUTH FOSTER HOMES: CHILD PRIVACY RIGHTS

(1) The foster parents shall allow privacy for the child and shall provide appropriate sleeping arrangements, separate storage space for clothing and personal articles, and a place to display the child's socially appropriate creative works and symbols of identity.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-102, 52-2-111, 52-2-113, 52-2-115, 52-2-601, 52-2-603, 52-2-621 and 52-2-666, MCA

RULE XXX YOUTH FOSTER HOMES: SLEEPING ARRANGEMENTS AND REQUIREMENTS (1) Each foster child must sleep in a room designated as a bedroom that provides for privacy.

(2) Any room in which the child sleeps must have a window sufficiently large for an adult to enter or exit in an emergency.

(3) Children of the opposite sex who are five years of age or older must not share a bedroom.

(4) Children over 24 months of age may not routinely sleep in the same room with an adult unless approved by the department foster care licensing supervisor.

(5) A foster parent shall sleep within call of all foster children during the night or must use a baby monitor or other intercom system that will alert the foster parent to the child's



call.

(6) Each child must be provided with the child's own bed, which must be at least 30 inches wide and of a length which is adequate for the child's height.

(7) A child under the age of four may be provided with a toddler bed which must use a standard crib mattress, be at least 28 inches wide, and have a length adequate for the child's height.

(8) Children under age two must sleep in a crib. Cribs must have a snug fitting mattress and there must not be more than 2 and 3/8 inches of space between the vertical slats.

(9) Each bed or crib must have adequate bedding.

(10) Bunk beds more than two bunks high are prohibited. If bunk beds are used, the upper bunk must have a guardrail. Upper bunks must not be used by children under eight years of age.

(11) Each child must be provided with space in a closet, locker, or dresser for clothing and personal belongings located in his sleeping area.

(12) When placement in a kinship foster home is determined to be in a child's best interests, a regional administrator may approve a requested exception to one or more provisions of this rule on a case by case basis.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE XXXI YOUTH FOSTER HOMES: YOUTH INDEPENDENT LIVING PROGRAM, JOB TRAINING AND EMPLOYMENT (1) The foster parents shall cooperate with the department's independent living program staff and contractors to ensure that eligible youth in foster care are encouraged and assisted to access services and benefits offered under the department's independent living program.

(2) The foster parents shall assist the placing agency, the youth, and the independent living program staff and contractors in developing an appropriate transitional plan for each youth age 16 or older.

(3) The foster parents shall encourage and assist each teenage youth to prepare for the transition from foster care to independent living.

(4) The foster parents shall assist the placing agency, the youth, and the independent living program staff and contractors in developing the youth's job readiness skills and, when appropriate, assisting the youth in locating employment.

(5) The foster parents shall assist youth in exploring postsecondary educational opportunities.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-102, 52-2-111, 52-2-113, 52-2-115, 52-2-601, 52-2-603, 52-2-621 and 52-2-666, MCA

RULE XXXII YOUTH FOSTER HOMES: THERAPEUTIC FOSTER HOMES

(1) Therapeutic foster parents must meet all requirements

for regular foster parents set forth in this rule, the requirements set forth in ARM 37.37.101, et seq. and the additional requirements in this rule and [Rule XLII].

(2) Therapeutic foster parents are in home treatment providers who, in addition to carrying out usual family foster parent responsibilities, implement treatment strategies and provide treatment interventions under the supervision of a therapeutic foster care agency's clinical staff according to the child's individual treatment plan.

(3) Therapeutic foster care requires the availability of one parent to provide 24 hour per day supervision to deliver therapeutic services as needed. Parenting skills must be sufficient to meet the level of therapeutic foster care being provided, including being adequate to address the needs of the emotionally disturbed youth in the areas of behavior management, supportive counseling, and implementation of the treatment interventions identified in the child's individual treatment plan.

(4) One foster parent of a preschool age foster child placed in a therapeutic foster home must not be employed outside of the home unless a written exception is made by a department regional administrator.

(5) If child care arrangements are made for a child receiving therapeutic foster care for any reason, including to allow a foster parent to work or in order to provide socialization opportunities for the child, such arrangements must be approved by the child's treatment team to ensure they meet the therapeutic needs of the child.

(6) A child receiving therapeutic foster care may not be placed in child care in excess of four hours per day without the written approval of a department regional administrator.

(7) Therapeutic foster parents are members of the youth's treatment team and must participate in treatment team meetings.

(8) Therapeutic foster parents must regularly document the youth's progress toward achievement of the individual treatment plan. This documentation must be put in writing and must be incorporated into the youth's case file within 30 days.

(9) The department may approve the placement of children who are not approved for therapeutic foster care services with youth receiving therapeutic foster care services when:

(a) placement in the therapeutic foster home will maintain an intact sibling group;

(b) placement in the therapeutic foster home will maintain a parent/child relationship when the parent is a youth who is receiving therapeutic foster care services;

(c) moving a child who was previously placed in the therapeutic foster home but is not receiving therapeutic foster care services is determined by the department to not be in the best interests of the child; or

(d) the department and treatment team determine that a kinship placement is appropriate and an exception is granted by the regional administrator.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-102, 52-2-111, 52-2-113, 52-2-

115, 52-2-601, 52-2-603, 52-2-621 and 52-2-666, MCA

RULE XXXIII YOUTH FOSTER HOMES: PHYSICAL CARE OF CHILDREN

(1) The foster parents must work with the placing agency to ensure that the child's medical needs are met.

(2) Every foster child shall have an identified physician.

(3) Medical and dental care, including examinations and treatment, shall be obtained for children as needed.

(4) The foster parents, in consultation with the placing worker, shall arrange for each child to have a complete early periodic screening, diagnosis, and treatment (EPSDT) well child examination within 30 days of placement in foster care. Subsequent examinations must be completed yearly thereafter unless more frequent examinations are recommended by the child's physician.

(5) A child two years of age or older who has not had a dental examination within a year prior to placement in foster care shall have one within 90 days after admission. Reexamination shall be done at least annually unless more frequent examinations are recommended by the child's dentist.

(6) Psychiatric, psychological, and counseling services, including diagnosis and treatment, shall be obtained for each child as determined necessary by the placing agency.

(7) The foster parents must keep the placing agency apprised of illnesses of each foster child which require medical attention and the results of examinations, tests, and treatment recommended for each child.

(8) All medication shall be kept in the original containers labeled with the original prescription labels in a place inaccessible to children.

(9) All medication shall be given as prescribed unless a licensed health care provider rescinds the prescription or otherwise modifies it. The foster parent shall notify the child's case worker of any changes in medication.

(10) All children residing in the home under 12 years of age shall be immunized in accordance with [Rules XX and XXI]. Any child with a history of measles is considered immunized against measles.

(11) The medical and immunization history of the child will be recorded on forms provided by the department and kept on file in both the foster home and the placing agency.

(12) In an emergency, the foster parents shall make arrangements for emergency care at a nearby hospital, clinic, or doctor's office and, as soon as possible thereafter, shall notify the placing agency.

(13) When a preschool child with special needs is in foster care, one of the foster parents should not be employed outside of the home. An exception may be granted by a regional administrator.

(14) Foster parents must not provide tobacco products in any form to children under the age of 18 who are placed in the foster home.

(15) Foster parents must not allow children placed in the foster home to be exposed to secondhand smoke in the foster parents' home or vehicle.

(16) Nothing in (14) or (15) is meant to interfere with

traditional or Native American ceremonies involving the use of tobacco.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE XXXIV YOUTH FOSTER HOMES: DISCIPLINE (1) Foster parents shall use discipline appropriate to the child's age and developmental level. The foster parents' approach to discipline must be positive.

(2) The foster parents shall not use spanking or other forms of physical punishment or any other disciplinary technique which is humiliating, shaming, cruel, capricious, frightening, or otherwise damaging to a child.

(3) No child in care shall be subjected to any form of abuse.

(4) No child in care shall be subjected to verbal abuse, derogatory remarks about himself or members of his family, or threats to expel the child from the foster home.

(5) No child in care shall be deprived of meals, mail, or family visits as a method of discipline.

(6) Foster parents shall not punish children for bed wetting or any other toilet training issue.

(7) Children must not be placed in a locked room.

(8) Participation or nonparticipation by the child in religious activities of the child or the foster family shall not be used as a form of discipline.

(9) Medication or withholding of prescribed medication shall never be used to discipline or threaten children.

(10) If a foster parent or other household member is involved in any physical discipline of a foster child or any other violation of this rule, the foster parent must report the violation as required in [Rule XVII].

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-102, 52-2-111, 52-2-112, 52-2-113, 52-2-115, 52-2-601, 52-2-603, 52-2-621 and 52-2-622, MCA

RULE XXXV YOUTH FOSTER HOMES: ENVIRONMENTAL AND SAFETY REQUIREMENTS (1) The home and its premises shall be comparable to other residences of the community and neighborhood in which it is located.

(2) The home must be built or manufactured for the purpose of full-time residency.

(3) Every interior door shall be designed to permit the opening of the locked door from the outside in an emergency.

(4) Protective plugs shall be installed on electrical outlets in all homes occupied by foster children under five years of age.

(5) The foster parents shall keep the home clean and in good repair and the premises shall be kept free from objects, materials, and conditions which constitute a danger to the occupants.

(6) The foster parents must protect any foster child from any threat to a child's health, welfare or safety in the neighborhood.

(7) All foster homes shall be equipped with a telephone. Telephone numbers of the placing agency, hospital, police department, fire department, ambulance, and poison control center must be posted by each telephone.

(8) The foster home must have an adequate and safe sewage disposal system.

(9) If the home's water supply is not from a municipal system, the foster home must arrange to, at a minimum, have a basic screen water test conducted at least annually through the Department of Public Health and Human Services, Public Health and Safety Division, Laboratory Services Bureau, Environmental Laboratory Section, Cogswell Building, 1400 Broadway, Room B-204, Helena, Montana 59620 to ensure that the water supply remains safe for human consumption. Documentation of the test results must be provided to the licensing worker.

(10) Children shall not be exposed to paint containing lead in excess of .06%.

(11) Cleaning materials, flammable liquids, detergents, aerosol products, and other poisonous and toxic materials shall be kept in their original containers or shall be clearly labeled with both symbols and words indicating that the contents are hazardous. Such substances shall be kept in a place inaccessible to children and shall be childproofed, if possible. They shall be used in such a way that will not contaminate play surfaces, food, food preparation areas, or constitute a hazard to the children.

(12) Any pet or animal present at the home with the foster parents' permission shall not pose a threat to the safety or well being of any child placed in the home.

(a) The pet or animal shall show no evidence of carrying disease.

(b) Documentation provided by a veterinarian verifying that any pet or animal belonging to the foster parents and present at the home is in good health must be provided to the department upon request.

(c) Foster parents are legally and financially responsible for the actions and any resulting injuries that may be caused by any animal allowed in or around the foster home.

(13) Guns and ammunition shall be kept in locked storage with guns stored separately from ammunition. Guns kept in vehicles shall be locked in the glove compartment or gun rack, shall be unloaded, and ammunition must be kept locked in a separate location in the vehicle.

(14) Any outdoor play area shall be maintained hazard free. If any part of the play area is adjacent to a well, machinery, road, drainage ditch, holes, or other hazardous areas, the play area shall be enclosed with fencing or natural barriers when preschool children are in placement to restrict the children from these areas.

(15) Outdoor equipment, such as climbing apparatus, slides, swings, and trampolines, shall be anchored firmly and placed in a safe location. A responsible adult must be present and directly observing any activity of a foster child on a

trampoline at all times.

(16) The foster parents shall make swimming and wading pools and swimming areas inaccessible to children except when directly supervised by a responsible adult.

(17) Foster children may not participate in high risk activities including, but not limited to hunting, snowmobiling, four-wheeling, or rock climbing without written consent of the licensing supervisor and, where appropriate, the birth parents.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE XXXVI YOUTH FOSTER HOMES: FIRE SAFETY REQUIREMENTS

(1) There shall be two unobstructed means of exit from all sleeping areas occupied by foster children. Foster parents must prepare a written plan to rescue children if the primary means of exit is blocked.

(2) Foster parents must devise a plan for everyone in the home to exit the home in emergencies and must teach the plan to children placed in the home. There must be regular fire drills at different times of the day and night.

(3) A working smoke detector which is properly maintained and regularly tested shall be located in each bedroom and in the hallway leading to the bedroom with at least one smoke detector on each level of the foster home.

(4) Each foster home must have a workable portable fire extinguisher with a minimum rating of 2A10BC. Extinguishers shall be readily accessible and shall be mounted.

(5) No portable unvented fuel-fired heating devices such as portable kerosene or oil heaters are allowed.

(6) No extension cord shall be used as permanent wiring.

(7) All woodburning stoves, pellet stoves, and fireplace inserts must meet building codes for the installation and use of such stoves. If the department identifies a possible concern regarding safety of a wood stove or fireplace, the department may require the foster home to have an inspection conducted to certify that it meets applicable codes.

(8) Upon request of the department, the state fire marshal or his designee shall inspect any home for which a license is applied or issued and shall report its findings to the department.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE XXXVII YOUTH FOSTER HOMES: TRANSPORTATION

(1) Foster parents and any person transporting foster children with the foster parents' permission shall possess a valid driver's license and shall meet at least the minimum liability insurance coverage requirements set by state law.

(2) All doors on vehicles must be locked whenever the vehicle is in motion.

(3) No vehicle shall begin moving until all children are seated and secured in age appropriate safety restraints which must remain fastened at all times the vehicle is in motion.

(4) Foster parents must request and receive written travel authorization before taking any child placed by the department:

- (a) out of the county;
- (b) out of the state; or
- (c) out of the country.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE XXXVIII YOUTH FOSTER HOMES: REQUIRED TRAINING

(1) Each applicant shall attend an orientation and preservice training of not less than 18 hours prior to issuance of a regular license.

(2) The foster parents must obtain a total of at least 15 hours of training for relicensure. Training must be documented on a form provided by the department.

(3) The department will provide the foster parents notice that documentation of the training requirements is due in the materials provided by the department for relicensure.

(a) If the foster parents fail to obtain the required training hours, the license will be restricted to the care of the children in the home at the time until such time as the required training hours have been successfully completed; or

(b) If there are no children in the foster home, the license will be deemed automatically suspended until such time as the required training hours have been successfully completed.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE XXXIX YOUTH FOSTER HOMES: TRAINING EXEMPTIONS

(1) An exemption to the required orientation and preservice training must be approved by a department regional administrator.

(2) An exemption to the required 15 hours of training for relicensure must be approved by a department regional administrator.

(3) Exemptions to any training requirement must be written and a copy maintained in the licensing file.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE XL YOUTH FOSTER HOMES: REQUIRED TRAINING TOPICS

(1) Annual training is intended to help the foster parents gain further understanding regarding such issues as child maltreatment, child growth and development, family dysfunction,

permanency planning, emergency or long term medical needs of children, and age appropriate preparation of youth for independent living.

(2) Training must be provided or approved by the department and may include training on the following topics:

- (a) separation and grieving;
- (b) loss and attachment;
- (c) alternatives to physical discipline and an explanation of the department's policy on physical discipline;
- (d) positive parenting techniques;
- (e) the department's and foster parents' roles and responsibilities;
- (f) biological family rights and responsibilities;
- (g) how and why children come into foster care;
- (h) types and behaviors of children in foster care;
- (i) placement process;
- (j) confidentiality;
- (k) sexual abuse;
- (l) drugs and alcohol;
- (m) interpersonal communications;
- (n) foster parent insurance; and
- (o) other topics approved by the department.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE XLI YOUTH FOSTER HOMES: REQUIRED TRAINING FOR THERAPEUTIC FOSTER HOMES (1) Therapeutic foster parents must each complete 18 hours of orientation and preservice training and 15 hours of training described in (2)(a) and (b) before initial licensure.

(2) Each year thereafter, therapeutic foster parents must each complete a total of 30 hours of annual training that may include training in the general areas identified in [RULE XL(2)], but which must also include a minimum of 15 hours of training directly related to:

(a) the special needs of youth with emotional disturbances receiving treatment for their emotional disturbance in a treatment family environment; and

(b) the use of nonphysical methods of controlling youth to assure the safety and protection of the youth and others.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

3. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.37.316 THERAPEUTIC FAMILY CARE, TREATMENT PARENTS

(1) The therapeutic family care agency recruits, trains and supervises treatment parents. In addition, the therapeutic



family care agency recommends treatment families for licensure by the department, as specified under ARM 37.93.716. Therapeutic foster parents must meet all licensing requirements set out in [Rules I through XLI].

(2) Therapeutic treatment parents are in home treatment providers who, in addition to carrying out usual family foster parent responsibilities, implement treatment strategies and provide treatment interventions under the supervision of the therapeutic family care agency's clinical staff according to the youth's individual treatment plan.

(3) Therapeutic family care requires one parent be available to provide 24 hour per day supervision and be able to deliver therapeutic services as needed. Parenting skills must be appropriate to the level of therapeutic family care being provided and adequate to deal with the needs of emotionally disturbed youths in the areas of behavior management, supportive counseling, and implementation of the treatment interventions contained in the youth's individual treatment plan.

(4) Treatment parents providing intensive level therapeutic family care must be able to provide routine guidance to the mental health assistant to ~~assure~~ ensure that these services support the goals and objectives of the youth's individual treatment plan.

(5) Treatment parents are members of the youth's treatment team and must be available to participate in treatment team meetings.

(6) Treatment parents must regularly document the youth's progress toward achievement of the individual treatment plan. This documentation must be in writing and incorporated as documented into the youth's case file every 30 days.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

37.37.318 THERAPEUTIC FAMILY CARE, MEDICAL NECESSITY, ADDITIONAL TRAINING REQUIREMENTS (1) Treatment parents must complete orientation and training as described in ~~ARM 37.97.1019~~ [Rules XXXVII through XLI].

(2) ~~Treatment parents and~~ Mmental health assistants must receive a minimum of 15 hours of training annually directly related to:

(a) the special needs of youth with emotional disturbances receiving treatment for their emotional disturbance in a treatment family environment; and

(b) the use of nonphysical methods of controlling youth to ~~assure~~ ensure the safety and protection of the youth and others.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

4. The rule 37.97.1001 as proposed to be repealed is on page 37-24007 of the Administrative Rules of Montana.

AUTH: Sec. 41-3-1103, MCA  
IMP: Sec. 41-3-1103 and 41-3-1142, MCA

The rules 37.97.1002 and 37.97.1006 as proposed to be repealed are on pages 37-24007 through 37-24012 of the Administrative Rules of Montana.

AUTH: Sec. 41-3-1103 and 53-4-111, MCA  
IMP: Sec. 41-3-1103 and 53-4-113, MCA

The rule 37.97.1011 as proposed to be repealed is on pages 37-24012 and 37-24013 of the Administrative Rules of Montana.

AUTH: Sec. 41-3-1103 and 53-4-111, MCA  
IMP: Sec. 41-3-1103, 41-3-1142 and 53-4-113, MCA

The rules 37.97.1013, 37.97.1014, 37.97.1016, 37.97.1018 and 37.97.1019 as proposed to be repealed are on pages 37-24013 through 37-24015 of the Administrative Rules of Montana.

AUTH: Sec. 41-3-1103 and 53-4-111, MCA  
IMP: Sec. 41-3-1103 and 53-4-113, MCA

5. The department is required by section 471 of the Social Security Act to establish requirements for family foster homes which are reasonably in accord with recommended standards. Requirements that must be addressed include safety, sanitation, and protection of civil rights. The department is encouraged by the United States Department of Health and Human Services (HHS) to develop and implement additional licensing requirements and is required to apply the requirements equally to all foster family homes. This requirement does not preclude the department from establishing additional requirements for foster homes that provide care to special populations, such as children receiving therapeutic foster care. The department must ensure that foster parents are adequately prepared to provide appropriate care for children placed in their home. The department must ensure that the licensing requirements provide for the safety, health, and well being of children placed in youth foster homes.

The department is granted specific authority to adopt rules regarding the licensure, operation, and regulation of youth care facilities as well as authority to inspect all licensed facilities and to take such licensing action, including revocation, as determined to be necessary to protect children. The department has authority to establish administrative rules for the licensure of youth care facilities under 52-2-603, MCA and 52-2-622, MCA. Child and Family Services Division (CFS) is responsible for the licensure of youth foster homes, including kinship foster homes and therapeutic foster homes. The Quality Assurance Division (QAD) is responsible for licensure of other types of youth care facilities. Some of the current licensing rules are applicable to all youth care facilities, including youth foster homes.

The requirements for youth foster homes and other youth

care facilities are increasingly different and it will be beneficial to applicants and licensees to have administrative rules that are specific to individual facility types. In addition, it is necessary to amend the youth foster home rules because some language is outdated and ambiguous, and in some instances, does not reflect current federal or state statutes. Updating the youth foster home rules is necessary to address gaps in the current rules and to ensure that the rules adequately address the issues relative to the safety and well being of children placed in youth foster homes.

The department is proposing to repeal existing rules and adopt new rules because of the number and complexity of the changes that are proposed. Adoption of new rules will make it easier for applicants and licensees to reference the applicable rules for youth foster homes since they will be located in one chapter. The proposed rules for youth foster homes will contain all licensing rules that apply to such homes. This will eliminate confusion as to which provisions apply to which facilities.

New Rules I through XLII are necessary because the existing rules, ARM 37.97.101 through 37.97.132, will continue to be used by QAD for youth care facilities other than youth foster homes. ARM 37.97.1001, 37.97.1002, 37.97.1006, 37.97.1011, 37.97.1013, 37.97.1014, 37.97.1016, 37.97.1018, and 37.97.1019 will be repealed and the provisions of these rules incorporated into the new rules. New rule numbers will be assigned to the specific rules governing youth foster homes.

Rule I, Youth Foster Homes: Purpose, defines the purpose of licensing rules specific to youth foster homes. The department has statutory authority to establish administrative rules for youth foster homes. Administrative rules for youth foster homes are necessary to establish minimum requirements that must be met in order to obtain or maintain a youth foster home license.

Rule II, Youth Foster Homes: Definitions, contains definitions specific to youth foster homes. Existing definitions have been amended to reflect current language, to conform with 52-2-602, MCA, and to reflect the inclusion of therapeutic youth foster home licensing rules (therapeutic family care) in the youth foster home licensing rules.

Rule III, Youth Foster Homes: License Required, describes the entities which may issue a license to a youth foster home and the consequences of operating a youth foster home without a license as provided for in statute.

Rule IV, Youth Foster Homes: Licensing Procedures, and Rule V, Youth Foster Homes: Licensure and Renewal, are necessary to establish the application process and the process under which the department will assess applications prior to issuance of an initial or renewed license for youth foster homes. The proposed rules clarify the department's role in determining if an

applicant meets the requirements for licensure upon receipt of an application and completion of a licensing assessment. Rule V includes language which will limit the total number of children who may reside in a foster home. Rule V will provide the department with parameters regarding the total number of children that can reside in a foster home. This rule is necessary in order to ensure that the needs of all children in the home can be appropriately met.

Rule VI, Youth Foster Homes: Provisional License, describes the circumstances under which the department may issue a provisional youth foster home license to an applicant who does not fully meet all licensing requirements.

Rule VII, Youth Foster Homes: Restricted License, allows the department to issue licenses to providers who wish to care only for specific children, often kin.

Rule VIII, Youth Foster Homes: Dual License, requires that applicants or licensees who wish to be both registered as day care providers and licensed as youth foster home providers obtain approval from the Child and Family Services Division and the Quality Assurance Division. This rule is necessary in order to ensure that the needs of all children in the home can be appropriately met.

Rule IX, Youth Foster Homes: Granting License Exceptions, describes some circumstances under which regional administrator approval is required prior to issuance of a license. This rule is necessary to allow the department the ability to assess individual circumstances which may result in possible significant negative impact on children. The ability to grant an exception is of particular importance in some situations often involving kin. Rule IX also requires applicants and licensees to apprise the department of significant life events that may impact children placed in the home and/or the status of the license. This rule is necessary to ensure that the department has the opportunity to determine that the needs of children in foster care are not adversely impacted by changes in the foster family's situation.

Rule X, Youth Foster Homes: Negative Licensing Action, gives the department authority to take negative licensing action following written notification to an applicant or licensee when the department has determined that circumstances warrant such action. The department is required by federal law to deny a license for applicants convicted of certain crimes such as those described in the rule. The rule provides the department with the necessary authority to ensure that applicants or licensees who are not appropriate to provide foster care because they or others in the home or on the property of the applicant or licensee pose a threat to children's safety and well being do not become licensed or do not remain licensed. This rule is necessary in order to protect children.

Rule XI, Youth Foster Homes: Removal of a Child, is also

necessary to protect children. This rule reiterates the department's authority to make placement decisions for children for whom the department has placement responsibility, including a determination of the most appropriate placement setting.

Rule XII, Youth Foster Homes: Hearing Procedures, provides for an appeal process for youth foster home applicants or licensees seeking a fair hearing based on negative licensing action taken by the department as provided for in Rule X. This rule is necessary to protect the due process rights of applicants and licensees.

Rule XIII, Youth Foster Homes: Confidentiality of Records and Information, is necessary to ensure that personal information regarding a foster child or the family of a foster child is not indiscriminately shared with others. The rule describes the responsibility of licensed foster parents to keep information regarding a foster child or the family of any foster child about whom the foster parent obtains information confidential. The rule clarifies the circumstances under which information may be shared. The rule also gives the department authority to access records of children placed in the foster home when the children have not been placed by the department.

Rule XIV, Youth Foster Homes: Reports of Change in Composition of Foster Home, is necessary to ensure that the department receives prompt notice of significant life events or changes in a foster parent's household which may impact the safety and well being of a child placed in the home as well as changes which impact the license issued to a foster home. This rule also requires that foster parents operating under a child placing agency notify the child placing agency of significant life events or changes. The rule clarifies the expectations of the department that a foster parent will notify the foster child's worker when the foster parent determines that he is unable to continue to care for a child.

Rule XV, Youth Foster Homes: Reports of Suspected Child Abuse or Neglect, establishes the time frame in which foster parents, who are mandatory reporters, must report suspected child abuse or neglect to the department. Foster parents are often the persons to whom children placed in the foster home will disclose abuse or neglect and this information must be promptly reported to the department in order to ensure that children are protected and that appropriate services are provided to them.

Rule XVI, Youth Foster Homes: Reports of Serious Incidents and Threats, establishes the reporting requirements for serious incidents, runaways, and some disasters and emergencies. The rule is necessary to ensure that the department receives timely notice of situations which may have a serious negative impact on the safety and well being of children in foster homes.

Rule XVII, Youth Foster Homes: Reports of Discipline Violations, expands the reporting requirement for violations of

the discipline rules to include other members of the household in addition to foster parents. The rule clarifies the reporting requirements and requires that the foster parent notify both the licensing worker or supervisor and the placing worker or agency. This rule is necessary because some violations of discipline rules may constitute abuse, may impact the safety and well being of a child, and may impact the continued licensure of the foster home.

Rule XVIII, Youth Foster Homes: General Requirements for Foster Parents and Other Household Members, describes the general requirements for foster parents and other household members and is necessary to ensure that foster parents are appropriate caretakers for abused and neglected children and that no one in the household poses a risk or threat to children placed in the foster home.

Rule XIX, Youth Foster Homes: Health Verification Requirements for Foster Parents and Other Household Members, expands the requirement for personal statements of health to include any person in the household for more than two weeks. This rule is intended to provide the department with timely information regarding the health of household members and allow the department to assess potential impact on children placed in the foster home.

Rule XX, Youth Foster Homes: Preschool Age Child Immunization Requirements and Rule XXI, Youth Foster Homes: School Aged Child Immunization Requirements, update the current rule addressing immunization requirements for the children residing in a foster home to reflect current immunization recommendations. In recognition of the fact that children in foster care are at greater risk for illness than most children, these rules are necessary to help protect the health of children placed in foster care.

Rule XXII, Youth Foster Homes: Criminal Background Checks, is necessary to establish the process to be used in conducting criminal background checks as required by state and federal statute. State law specifically requires the department to conduct child protective service and criminal background checks of youth foster home applicants. Rule XXII outlines the process to be used to obtain the results of a criminal records check via fingerprints and provides for an exception process for applicants who cannot be successfully fingerprinted or for whom the Department of Justice is unable to successfully read fingerprint cards. The rule defines the process to be followed when assessing applicants who have lived in states other than Montana and for whom a fingerprint based check cannot be obtained. The rule provides for an annual name based check for renewal of a foster home license. This rule also establishes the process to be followed in requesting a child protective services check and the process to be followed if the department is unable to obtain results from a child protective services check.

Rule XXIII, Youth Foster Homes: Psychological and Medical Examinations, strengthens the department's authority to obtain medical and psychological information necessary to properly assess an applicant's ability to provide a safe and appropriate environment and proper care for children placed with the applicant. The rule authorizes the department to obtain medical and psychological information regarding household members in addition to the applicant. The rule specifies that the department may use the results of a psychological or medical examination in determining whether an applicant meets licensing requirements. This rule is necessary in order to fully assess the ability and appropriateness of some applicants to become licensed.

Rules XXIV, Youth Foster Homes: General Program Requirements, XXV, Youth Foster Homes: Cooperation of Foster Parents, XXVI, Youth Foster Homes: Child Education and Training, XXVII, Youth Foster Homes: Child Religious and Cultural Expression, XXVIII, Youth Foster Homes: Child Clothing, XXIX, Youth Foster Homes: Child Privacy Rights, XXX, Youth Foster Homes: Sleeping Arrangements and Requirements, and XXXI, Youth Foster Homes: Youth Independent Living Program, Job Training and Employment, are necessary to ensure that the needs of children placed in foster homes are appropriately met. The rules set out the expectations the Department has of foster parents in working with the agency, visitation between the child and his/her birth or legal family, education, religion, cultural expression, clothing, privacy, and sleeping arrangements.

Rule XXVIII, Youth Foster Homes: Child Clothing, will require that the foster parent inventory the clothing and personal possessions of children placed in the foster home and that the foster parent maintain receipts for clothing purchased with funds provided by the department. The foster parent is to provide the inventory and clothing receipts to the department as requested. This rule is intended to assist the department in ensuring that the clothing and possessions of children in foster care move with the child when the child leaves a foster home. The rule is also intended to assist the department in tracking the cost of clothing provided for children in foster care.

Rule XXX, Youth Foster Homes: Sleeping Arrangements and Requirements, is necessary to ensure that children are provided with a safe and appropriate sleeping room, bed, and bedding and that an adult will hear the child cry or call. This rule expands and clarifies the expectations for sleeping arrangements for children. The rule, as proposed, does allow the department to make an exception to certain requirements on a case by case basis for a kinship foster home.

Rule XXXI, Youth Foster Homes: Youth Independent Living Program Job Training and Employment, is necessary to improve the services provided to teenage youth in foster care. Foster parents who choose to care for youth age 16 and older must work cooperatively with department staff and contractors to meet the federal requirement of a transitional living plan and provision

of appropriate services to assist youth in the transition from foster care to living on their own. This rule requires foster parents of teenage youth to actively assist in preparing youth for the transition from foster care to self-sufficiency and independent living.

Rule XXXII, Youth Foster Homes: Therapeutic Foster Homes, is necessary to clarify that therapeutic youth foster homes also known as therapeutic family care homes, are youth foster homes and must meet all the licensing requirements of youth foster homes as well as additional requirements for therapeutic foster homes. Additional requirements are necessary in order to ensure that the higher needs of the children in therapeutic foster care are met. Therapeutic foster care is a subcategory of youth foster homes but some licensing rules for therapeutic foster homes are in ARM Title 37, chapter 37 of the Department's administrative rules. Rule XXXII incorporates some additional licensing requirements foster parents must meet.

Rule XXXIII, Youth Foster Homes: Physical Care of Children, is necessary to clarify the expectations of foster parents in meeting the physical health needs of children. Notable additions to the existing rule include the prohibition regarding the provision of tobacco products to foster children by foster parents and the exposure of foster children to secondhand smoke while in the foster parent's care.

Rule XXXIV, Youth Foster Homes: Discipline, updates language and clarifies the expectations of foster parents when disciplining foster children. The rule clarifies that foster parents are not to use spanking or other forms of physical punishment with foster children.

Rule XXXV, Youth Foster Homes: Environmental and Safety Requirements, is necessary to ensure that the foster home and premises are safe and do not contain obvious hazards which might compromise the safety and well being of children placed in the foster home.

Rule XXVI, Youth Foster Homes: Fire Safety Requirements, is necessary to ensure that minimal fire safety requirements are met and to minimize the risk of fire danger to foster children and other occupants of the foster home.

Rules XXXVII, Youth Foster Homes: Transportation, will help to protect children who are transported by foster parents or by other persons given permission to transport children by the foster parents by requiring that all children are secure in appropriate safety restraints and that doors to the vehicle are locked when the vehicle is moving. Language is added to the existing rule requiring foster parents to obtain permission when traveling out of the county, out of the state, or out of the country with foster children.

Rule XXXVIII, Youth Foster Homes: Required Training, is necessary because the department is required by federal law to



prepare foster parents to provide appropriate care for children placed in a foster home. The rule clarifies what the department requires of foster parents regarding preservice and ongoing training, and the consequences for failure to obtain the required training.

Rule XXXIX, Youth Foster Homes: Training Exemptions, is necessary to allow the department the option of waiving specific training requirements on a case by case basis.

Rule XL, Youth Foster Homes: Required Training Topics, describes the types of training content which will meet the training requirements of Rule XXXIX. This rule clarifies that training must be provided by or approved by the department in order to meet the requirements of Rule XXXIX.

Rule XLI, Youth Foster Parents: Required Training Topics for Therapeutic Foster Homes, clarifies that therapeutic youth foster parents are required to meet the same training requirements as other youth foster homes as well as additional training requirements. Additional training requirements are necessary due to the higher needs of children placed in therapeutic foster homes. Rule XLI incorporates the current training requirements for therapeutic youth foster homes in ARM 37.37.318 into the youth foster home licensing rules.

There is no fiscal impact that will occur by adopting these rules.

6. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on January 12, 2006. Data, views or arguments may also be submitted by facsimile to (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

7. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

Dawn Sliva  
Rule Reviewer

Joan Miles  
Director, Public Health and  
Human Services

Certified to the Secretary of State November 28, 2005.